

107TH CONGRESS
2D SESSION

S. 2615

To amend title XVIII of the Social Security Act to provide for improvements in access to services in rural hospitals and critical access hospitals.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2002

Mr. MURKOWSKI (for himself and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to provide for improvements in access to services in rural hospitals and critical access hospitals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECU-**
4 **RITY ACT.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Rural Community Hospital Assistance Act of 2002”.

7 (b) AMENDMENTS TO SOCIAL SECURITY ACT.—Ex-
8 cept as otherwise specifically provided, whenever in this
9 Act an amendment is expressed in terms of an amendment
10 to, or repeal of, a section or other provision, the reference

1 shall be considered a reference to that section or other
 2 provision of the Social Security Act.

3 **SEC. 2. ESTABLISHMENT OF RURAL COMMUNITY HOSPITAL**
 4 **(RCH) PROGRAM.**

5 (a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x)
 6 is amended by adding at the end of the following new sub-
 7 section:

8 “Rural Community Hospital; Rural Community Hospital
 9 Services

10 “(ww)(1) The term ‘rural community hospital’ means
 11 a hospital (as defined in subsection (e)) that—

12 “(A) is located in a rural area (as defined in
 13 section 1886(d)(2)(D)) or treated as being so lo-
 14 cated pursuant to section 1886(d)(8)(E);

15 “(B) subject to subparagraph (B), has less than
 16 51 acute care inpatient beds, as reported in its most
 17 recent cost report;

18 “(C) makes available 24-hour emergency care
 19 services;

20 “(D) subject to subparagraph (C), has a pro-
 21 vider agreement in effect with the Secretary and is
 22 open to the public as of January 1, 2002; and

23 “(E) applies to the Secretary for such designa-
 24 tion.

1 “(2) For purposes of paragraph (1)(B), beds in a
 2 psychiatric or rehabilitation unit of the hospital which is
 3 a distinct part of the hospital shall not be counted.

4 “(3) Subparagraph (1)(C) shall not be construed to
 5 prohibit any of the following from qualifying as a rural
 6 community hospital:

7 “(A) A replacement facility (as defined by the
 8 Secretary in regulations in effect on January 1,
 9 2002) with the same service area (as defined by the
 10 Secretary in regulations in effect on such date).

11 “(B) A facility obtaining a new provider num-
 12 ber pursuant to a change of ownership.

13 “(C) A facility which has a binding written
 14 agreement with an outside, unrelated party for the
 15 construction, reconstruction, lease, rental, or financ-
 16 ing of a building as of January 1, 2002.

17 “(4) Nothing in this subsection shall be construed as
 18 prohibiting a critical access hospital from qualifying as a
 19 rural community hospital if the critical access hospital
 20 meets the conditions otherwise applicable to hospitals
 21 under subsection (e) and section 1866.”.

22 (b) PAYMENT.—

23 (1) INPATIENT SERVICES.—Section 1814 (42
 24 U.S.C. 1395f) is amended by adding at the end the
 25 following new subsection:

1 “Payment for Inpatient Services Furnished in Rural
2 Community Hospitals

3 “(m) The amount of payment under this part for in-
4 patient hospital services furnished in a rural community
5 hospital, other than such services furnished in a psy-
6 chiatric or rehabilitation unit of the hospital which is a
7 distinct part, is, at the election of the hospital in the appli-
8 cation referred to in section 1861(ww)(1)(D)—

9 “(1) the reasonable costs of providing such
10 services, without regard to the amount of the cus-
11 tomary or other charge, or

12 “(2) the amount of payment provided for under
13 the prospective payment system for inpatient hos-
14 pital services under section 1886(d).”.

15 (2) OUTPATIENT SERVICES.—Section 1834 (42
16 U.S.C. 1395m) is amended by adding at the end the
17 following new subsection:

18 “(n) PAYMENT FOR OUTPATIENT SERVICES FUR-
19 NISHED IN RURAL COMMUNITY HOSPITALS.—The
20 amount of payment under this part for outpatient services
21 furnished in a rural community hospital is, at the election
22 of the hospital in the application referred to in section
23 1861(ww)(1)(D)—

24 “(1) the reasonable costs of providing such
25 services, without regard to the amount of the cus-

1 tomary or other charge and any limitation under
 2 section 1861(v)(1)(U), or

3 “(2) the amount of payment provided for under
 4 the prospective payment system for covered OPD
 5 services under section 1833(t).”.

6 (3) HOME HEALTH SERVICES.—

7 (A) EXCLUSION FROM HOME HEALTH
 8 PPS.—

9 (i) IN GENERAL.—Section 1895 (42
 10 U.S.C. 1395fff) is amended by adding at
 11 the end the following:

12 “(f) EXCLUSION.—

13 “(1) IN GENERAL.—In determining payments
 14 under this title for home health services furnished on
 15 or after October 1, 2002, by a qualified RCH-based
 16 home health agency (as defined in paragraph (2))—

17 “(A) the agency may make a one-time elec-
 18 tion to waive application of the prospective pay-
 19 ment system established under this section to
 20 such services furnished by the agency shall not
 21 apply; and

22 “(B) in the case of such an election, pay-
 23 ment shall be made on the basis of the reason-
 24 able costs incurred in furnishing such services
 25 as determined under section 1861(v), but with-

out regard to the amount of the customary or other charges with respect to such services or the limitations established under paragraph (1)(L) of such section.

“(2) QUALIFIED RCH-BASED HOME HEALTH AGENCY DEFINED.—For purposes of paragraph (1), a ‘qualified RCH-based home health agency’ is a home health agency that is a provider-based entity (as defined in section 404 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554; Appendix F, 114 Stat. 2763A–506) of a rural community hospital that is located—

“(A) in a county in which no main or branch office of another home health agency is located; or

“(B) at least 35 miles from any main or branch office of another home health agency.”.

(ii) CONFORMING CHANGES.—

(I) PAYMENTS UNDER PART A.—

Section 1814(b) (42 U.S.C. 1395f(b)) is amended by inserting “or with respect to services to which section 1895(f) applies” after “equipment” in the matter preceding paragraph (1).

1 (II) PAYMENTS UNDER PART
 2 B.—Section 1833(a)(2)(A) (42 U.S.C.
 3 1395l(a)(2)(A)) is amended by strik-
 4 ing “the prospective payment system
 5 under”.

6 (III) PER VISIT LIMITS.—Section
 7 1861(v)(1)(L)(i) (42 U.S.C.
 8 1395x(v)(1)(L)(i)) is amended by in-
 9 serting “(other than by a qualified
 10 RCH-based home health agency (as
 11 defined in section 1895(f)(2))” after
 12 “with respect to services furnished by
 13 home health agencies”.

14 (iii) CONSOLIDATED BILLING.—

15 (I) RECIPIENT OF PAYMENT.—
 16 Section 1842(b)(6)(F) (42 U.S.C.
 17 1395u(b)(6)(F)) is amended by in-
 18 serting “and excluding home health
 19 services to which section to which sec-
 20 tion 1895(f) applies” after “provided
 21 for in such section”.

22 (II) EXCEPTION TO EXCLUSION
 23 FROM COVERAGE.—Section 1862(a)
 24 (42 U.S.C. 1395y(a)) is amended by
 25 inserting before the period at the end

1 of the second sentence the following:
 2 “and paragraph (21) shall not apply
 3 to home health services to which sec-
 4 tion 1895(f) applies”.

5 (4) RETURN ON EQUITY.—Section
 6 1861(v)(1)(P) (42 U.S.C. 1395x(v)(1)(P)) is
 7 amended—

8 (A) by inserting “(i)” after “(P)”; and

9 (B) by adding at the end the following:

10 “(ii)(I) Notwithstanding clause (i), subparagraph
 11 (S)(i), and section 1886(g)(2), such regulations shall pro-
 12 vide, in determining the reasonable costs of the services
 13 described in subclause (II) furnished by a rural commu-
 14 nity hospital on or after October 1, 2002, for payment
 15 of a return on equity capital at a rate of return equal to
 16 150 percent of the average specified in clause (i):

17 “(II) The services referred to in subclause (I) are in-
 18 patient hospital services, outpatient hospital services,
 19 home health services furnished by an RCH-based home
 20 health agency (as defined in section 1895(f)(2)), and am-
 21 bulance services.

22 “(III) Payment under this clause shall be made with-
 23 out regard to whether a provider is a proprietary pro-
 24 vider.”.

1 (5) EXEMPTION FROM 30 PERCENT REDUCTION
 2 IN REIMBURSEMENT FOR BAD DEBT.—Section
 3 1861(v)(1)(T) (42 U.S.C. 1395x(v)(1)(T)) is amend-
 4 ed by inserting “(other than a rural community hos-
 5 pital)” after “In determining such reasonable costs
 6 for hospitals”.

7 (c) BENEFICIARY COST-SHARING FOR OUTPATIENT
 8 SERVICES.—Section 1834(n) (as added by subsection
 9 (b)(2)) is amended—

10 (1) by inserting “(1)” after “(n)”; and

11 (2) adding at the end the following:

12 “(2) The amounts of beneficiary cost sharing for out-
 13 patient services furnished in a rural community hospital
 14 under this part shall be as follows:

15 “(A) For items and services that would have
 16 been paid under section 1833(t) if provided by a
 17 hospital, the amount of cost sharing determined
 18 under paragraph (8) of such section.

19 “(B) For items and services that would have
 20 been paid under section 1833(h) if furnished by a
 21 provider or supplier, no cost sharing shall apply.

22 “(C) For all other items and services, the
 23 amount of cost sharing that would apply to the item
 24 or service under the methodology that would be used
 25 to determine payment for such item or service if pro-

1 vided by a physician, provider, or supplier, as the
 2 case may be.”.

3 (d) CONFORMING AMENDMENTS.—

4 (1) PART A PAYMENT.—Section 1814(b) (42
 5 U.S.C. 1395f(b)) is amended by inserting “other
 6 than inpatient hospital services furnished by a rural
 7 community hospital,” after “critical access hospital
 8 services,”.

9 (2) PART B PAYMENT.—

10 (A) IN GENERAL.—Section 1833(a) (42
 11 U.S.C. 1395l(a)) is amended—

12 (i) in paragraph (2), in the matter be-
 13 fore subparagraph (A), by striking “and
 14 (I)” and inserting “(I), and (K)”;

15 (ii) by striking “and” at the end of
 16 paragraph (8);

17 (iii) by striking the period at the end
 18 of paragraph (9) and inserting “; and”;
 19 and

20 (iv) by adding at the end the fol-
 21 lowing:

22 “(10) in the case of outpatient services fur-
 23 nished by a rural community hospital, the amounts
 24 described in section 1834(n).”.

(B) AMBULANCE SERVICES.—Section 1834(l)(8) (42 U.S.C. 1395m(l)(8)), as added by section 205(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Appendix F, 114 Stat. 2763A–463), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended—

(i) in the heading, by striking “CRITICAL ACCESS HOSPITALS” and inserting “CERTAIN FACILITIES”;

(ii) by striking “or” at the end of subparagraph (A);

(iii) by redesignating subparagraph (B) as subparagraph (C);

(iv) by inserting after subparagraph (A) the following new subparagraph:

“(B) by a rural community hospital (as defined in section 1861(ww)(1)), or”; and

(v) in subparagraph (C), as so redesignated, by inserting “or a rural community hospital” after “critical access hospital”.

(3) TECHNICAL AMENDMENTS.—

(A) CONSULTATION WITH STATE AGENCIES.—Section 1863 (42 U.S.C. 1395z) is

1 amended by striking “and (dd)(2)” and insert-
 2 ing “(dd)(2), (mm)(1), and (ww)(1)”.

3 (B) PROVIDER AGREEMENTS.—Section
 4 1866(a)(2)(A) (42 U.S. C. 1395cc(a)(2)(A)) is
 5 amended by inserting “section 1834(n)(2),”
 6 after “section 1833(b),”.

7 (e) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to items and services furnished on
 9 or after October 1, 2002.

10 **SEC. 3. REMOVING BARRIERS TO ESTABLISHMENT OF DIS-**
 11 **TINCT PART UNITS BY RCH AND CAH FACILI-**
 12 **TIES.**

13 (a) IN GENERAL.—Section 1886(d)(1)(B) (42 U.S.C.
 14 1395ww(d)(1)(B)) is amended by striking “a distinct part
 15 of the hospital (as defined by the Secretary)” in the mat-
 16 ter following cause (v) and inserting “a distinct part (as
 17 defined by the Secretary) of the hospital or of a critical
 18 access hospital or a rural community hospital”.

19 (b) EFFECTIVE DATE.—The amendment made by
 20 subsection (a) shall apply to determinations with respect
 21 to distinct part unit status that are made on or after Octo-
 22 ber 1, 2002.

1 **SEC. 4. IMPROVEMENTS TO MEDICARE CRITICAL ACCESS**
 2 **HOSPITAL (CAH) PROGRAM.**

3 (a) EXCLUSION OF CERTAIN BEDS FROM BED
 4 COUNT.—Section 1820(c)(2) (42 U.S.C. 1395i–4(c)(2)) is
 5 amended by adding at the end the following:

6 “(E) EXCLUSION OF CERTAIN BEDS FROM
 7 BED COUNT.—In determining the number of
 8 beds of a facility for purposes of applying the
 9 bed limitations referred to in subparagraph
 10 (B)(iii) and subsection (f), the Secretary shall
 11 not take into account any bed of a distinct part
 12 psychiatric or rehabilitation unit (described in
 13 the matter following clause (v) of section
 14 1886(d)(1)(B)) of the facility, except that the
 15 total number of beds that are not taken into ac-
 16 count pursuant to this subparagraph with re-
 17 spect to a facility shall not exceed 10.”.

18 (b) PAYMENTS TO HOME HEALTH AGENCIES OWNED
 19 AND OPERATED BY A CAH.—Section 1895(f) (42 U.S.C.
 20 1395fff(f)), as added by section 2(b)(3), is further amend-
 21 ed by inserting “or by a home health agency that is owned
 22 and operated by a critical access hospital (as defined in
 23 section 1861(mm)(1))” after “as defined in paragraph
 24 (2))”.

25 (c) PAYMENTS TO CAH-OWNED SNFs.—

1 (1) IN GENERAL.—Section 1888(e) (42 U.S.C.
2 1395yy(e)) is amended—

3 (A) in paragraph (1), by striking “and
4 (12)” and inserting “(12), and (13)”; and

5 (B) by adding at the end thereof the fol-
6 lowing:

7 “(13) EXEMPTION OF CAH FACILITIES FROM
8 PPS.—In determining payments under this part for
9 covered skilled nursing facility services furnished on
10 or after October 1, 2002, by a skilled nursing facil-
11 ity that is a distinct part unit of a critical access
12 hospital (as defined in section 1861(mm)(1)) or is
13 owned and operated by a critical access hospital—

14 “(A) the prospective payment system es-
15 tablished under this subsection shall not apply;
16 and

17 “(B) payment shall be made on the basis
18 of the reasonable costs incurred in furnishing
19 such services as determined under section
20 1861(v), but without regard to the amount of
21 the customary or other charges with respect to
22 such services or the limitations established
23 under subsection (a).”.

24 (2) CONFORMING CHANGES.—

1 (A) IN GENERAL.—Section 1814(b) (42
 2 U.S.C. 1395f(b)), as amended by subsection
 3 (b)(2)(A), is further amended in the matter
 4 preceding paragraph (1)—

5 (i) by inserting “other than a skilled
 6 nursing facility providing covered skilled
 7 nursing facility services (as defined in sec-
 8 tion 1888(e)(2)) or posthospital extended
 9 care services to which section 1888(e)(13)
 10 applies,” after “inpatient critical access
 11 hospital services”; and

12 (ii) by striking “1813 1886,” and in-
 13 serting “1813, 1886, 1888,”.

14 (B) CONSOLIDATED BILLING.—

15 (i) RECIPIENT OF PAYMENT.—Section
 16 1842(b)(6)(E) (42 U.S.C. 1395u(b)(6)(E))
 17 is amended by inserting “services to which
 18 paragraph (7)(C) or (13) of section
 19 1888(e) applies and” after “other than”.

20 (ii) EXCEPTION TO EXCLUSION FROM
 21 COVERAGE.—Section 1862(a)(18) (42
 22 U.S.C. 1395y(a)(18)) is amended by in-
 23 serting “(other than services to which
 24 paragraph (7)(C) or (13) of section

1 1888(e) applies)” after “section
2 1888(e)(2)(A)(i)”.

3 (d) PAYMENTS TO DISTINCT PART PSYCHIATRIC OR
4 REHABILITATION UNITS OF CAHS.—Section 1886(b) (42
5 U.S.C. 1395ww(b)) is amended—

6 (1) in paragraph (1), by inserting “, other than
7 a distinct part psychiatric or rehabilitation unit to
8 which paragraph (8) applies,” after “subsection
9 (d)(1)(B)”;

10 (2) by adding at the end the following:

11 “(8) EXEMPTION OF CERTAIN DISTINCT PART PSY-
12 CHIATRIC OR REHABILITATION UNITS FROM COST LIM-
13 ITS.—In determining payments under this part for inpa-
14 tient hospital services furnished on or after October 1,
15 2002, by a distinct part psychiatric or rehabilitation unit
16 (described in the matter following clause (v) of subsection
17 (d)(1)(B)) of a critical access hospital (as defined in sec-
18 tion 1861(mm)(1))—

19 “(A) the limits imposed under the preceding
20 paragraphs of this subsection shall not apply; and

21 “(B) payment shall be made on the basis of the
22 reasonable costs incurred in furnishing such services
23 as determined under section 1861(v), but without re-
24 gard to the amount of the customary or other
25 charges with respect to such services.”.

1 (e) ELIMINATION OF ISOLATION TEST FOR COST-
 2 BASED CAH AMBULANCE SERVICES.—Paragraph (8) of
 3 section 1834(l) (42 U.S.C. 1395m(l)), as added by section
 4 205(a) of BIPA, is amended by striking the comma at
 5 the end of the last subparagraph and all that follows and
 6 inserting a period.

7 (f) RETURN ON EQUITY.—Section 1861(v)(1)(P) (42
 8 U.S.C. 1395x(v)(1)(P)), as amended by section 2(b)(4),
 9 is further amended by adding at the end the following:

10 “(iii)(I) Notwithstanding clause (i), subparagraph
 11 (S)(i), and section 1886(g)(2), such regulations shall pro-
 12 vide, in determining the reasonable costs of the services
 13 described in subclause (II) furnished by a rural commu-
 14 nity hospital on or after October 1, 2002, for payment
 15 of a return on equity capital at a rate of return equal to
 16 150 percent of the average specified in clause (i):

17 “(II) The services referred to in subclause (I) are in-
 18 patient critical access hospital services (as defined in sec-
 19 tion 1861(mm)(2)), outpatient critical access hospital
 20 services (as defined in section 1861(mm)(3)), extended
 21 care services provided pursuant to an agreement under
 22 section 1883, posthospital extended care services to which
 23 section 1888(e)(13) applies, home health services to which
 24 section 1895(f) applies, ambulance services to which sec-

tion 1834(l) applies, and inpatient hospital services to which section 1886(b)(8) applies.

“(III) Payment under this clause shall be made without regard to whether a provider is a proprietary provider.”.

(g) TECHNICAL CORRECTIONS.—

(1) SECTION 403(b) OF BBRA 1999.—Section 1820(b)(2) (42 U.S.C. 1395i–4(b)(2)) is amended by striking “nonprofit or public hospitals” and inserting “hospitals”.

(2) SECTION 203(b) OF BIPA 2000.—Section 1883(a)(3) (42 U.S.C. 1395tt(a)(3)) is amended—

(A) by inserting “section 1861(v)(1)(G) or” after “Notwithstanding”; and

(B) by striking “covered skilled nursing facility”.

(h) EFFECTIVE DATES.—

(1) ELIMINATION OF REQUIREMENTS.—The amendment made by subsections (a) and (b) shall apply to services furnished on or after October 1, 2002.

(2) TECHNICAL CORRECTIONS.—

(A) BBRA.—The amendment made by subsection (f)(1) shall be effective as if included in the enactment of section 403(b) of the Medi-

1 care, Medicaid, and SCHIP Balanced Budget
2 Refinement Act of 1999 (Appendix F, 113 Stat.
3 1501A–321), as enacted into law by section
4 1000(a)(6) of Public Law 106–113.

5 (B) BIPA.—The amendment made by sub-
6 section (f)(2) shall be effective as if included in
7 the enactment of section 203(b) of the Medi-
8 care, Medicaid, and SCHIP Benefits Improve-
9 ment and Protection Act of 2000 (Appendix F,
10 114 Stat. 2763A–463), as enacted into law by
11 section 1(a)(6) of Public Law 106–554.

○